ent intention appears, while a "sale or return," is in the nature of a sale with an option to return if unsatisfactory, or in other words a sale upon "condition subsequent." *Wind* v. *Iler,* 93 Iowa 316, 27 L. R. A. 219. Thus in case of a sale or trial on approval, "it is not enough that he ought to be satisfied, or that the article would be satisfactory to a reasonable man, or that a court and jury deem the article satisfactory. The contract is that the article shall be satisfactory to the vendee himself and not to someone else." 1 MECHEM, SALES, § 665; *Singerly* v. *Thayer,* 108 Pa. St. 291; *Gibson* v. *Cranage,* 39 Mich. 49; *McCarren* v. *McNulty,* 7 Gray 139. But in case of a "sale on approval with a warranty of quality, or where the contract is for "sale or return" (in which case title has already passed), in order to avoid the sale, the reasons required for dissatisfaction would necessarily be more stringent. In those cases appealing to taste, sentiment or artistic sensibility rather than to reason, "It would, of course, be the duty of the buyer to examine the article and not reject it unseen, but there could be no other test than his own convictions or sentiments." 1 MECHEM, SALES, § 667. In cases, however, requiring mechanical fitness, viz.: sale of machine to vendee's satisfaction, there is necessarily involved the duty on the part of the vendee to try it reasonably, in order to determine whether it will work or not, and no arbitrary rejection without a reasonable test would be consistent with the vendee's duty. *Buckley* v. *Meidroth,* 93 Ill. App. 460; *Hartford Sorghum Mfg. Co.* v. *John Brush,* 43 Vt. 528; *Garland* v. *Keeler,* 15 N. D. 548. For further illustrations see 54 Am. Rep. 711.

WILLS—EVIDENCE OF TESTATOR'S STATEMENTS AS TO REVOCATION.—The testator, after making the will which was offered for probate, made and executed other wills which if now in force would operate as a revocation of the former will. The latter wills, however, were not produced, and the proponent, seeking to establish the fact that they in turn were revoked and that the former will had thus been revived, offered evidence of declarations by the testator as to the revocation of the subsequent wills. *Held,* the evidence was admissible. *Aldrich* v. *Aldrich* (Mass. 1913), 102 N. E. 487.

There are three theories as to the admissibility of such declarations. One is that when they are not made in such close connection with the alleged act as to constitute part of the res gestae, they are mere assertions of an external fact offered as evidence of the truth of the assertion, are clearly within the hearsay rule, and are therefore inadmissible. *In re Shelton,* 143 N. C. 218, 10 Ann. Cas. 531; *Throckmorton* v. *Holt,* 180 U. S. 552; *Glass* v. *Scott,* 14 Colo. App. 377, 60 Pac. 186; *Stevens* v. *Stevens,* 72 N. H. 360, 56 Atl. 916; *Waterman* v. *Whitney,* 11 N. Y. 168. Another theory is that while such statements are clearly hearsay, they should be admitted as special exceptions to the hearsay rule. *Sugden* v. *St. Leonards,* 1 L. R. P. D. 203; *Weeks* v. *McBeth,* 14 Ala. 474; *Tyman* v. *Paschal,* 27 Tex. 300; *Patterson* v. *Hickey,* 32 Ga. 159. The courts following this theory, says Mr. WIGMORE, seem to be increasing in number. WIGMORE, EVID., § 1737. The third theory, that followed by the instant case, is that the testator's declarations are admissible not as special exceptions to the hearsay rule, but as circumstantial

evidence indicating testator's state of mind; or on the ground that they are direct assertions of the testator's belief and are therefore admissible under the *general* exception of statements of opinion and belief. *Johnson's Will,* 40 Conn. 587; *In re Page,* 118 Ill. 581, 8 N. E. 852; *Foster's App.,* 87 Pa. 75; *Steele* v. *Price,* 5 B. Monr. (Ky.) 63; *Valentine's Will,* 93 Wis. 45, 67 N. W. 12. Since by nature a will is peculiarly a creature of the testator's intent, the latter view seems to be the most logical.

WILLS—EXERCISE OF POWER—MALICE.—The testator left a will by which he appointed three trustees, (one of whom was his wife,) with general powers to look after his estate and with directions that they make such advancements to his children from their portions of his estate, as should be deemed advisable by his wife, such advancements to be deducted from the respective portions of the children. Upon the death of his wife, the property was to go to his children, or, in case of the decease of any of the children, then the parent's share to his children or descendants. During the life time of the widow she made, through the trustees, several advancements to one certain child. Plaintiff, the daughter of a deceased child of the testator, claimed this was not a valid exercise of the power under the will, and filed a bill for the construction of the will. *Held,* that since the wife of the testator had absolute right to make advancements to any of the children whenever she deemed it advisable, the court could not go back of this and inquire into the motive of the donee of the power. The fact that the advancements were made out of ill-will or spite will not invalidate the appointment, it appearing that there was no benefit to, or fraud upon the part of, the donee of the power. *Metcalf* v. *Gladding* (R. I. 1913), 87 Atl. 195.

The decision in this case, under the peculiar circumstances, would seem to be correct. The court remarked that while arbitrary powers are not to be favored, it is competent for a testator to create one, and if he does so it must be upheld. As SUGDEN says, if courts were to go into the motive of every exercise of a power, it would invalidate almost every appointment and lead to an interminable confusion. 2 SUGDEN, POWERS *193, and this same statement is laid down by the courts in *Vane* v. *Lord Dungenmore,* 2 Sch. & Lef. 117; *Supple* v. *Lowson,* Ambl. 729; *Topham* v. *Duke of Portland,* L. R. 5 Ch. 40; *Davis* v. *Uphill,* 1 Swanst. 129. This class of cases is to be distinguished from those in which personal interest or bad faith take part in the appointment. In the case of *Coffin* v. *Cooper,* 2 Dr. & Sm. 365, the court held that, in absence of bad faith, the fact that the donee of the power had a personal interest in making the appointment did not invalidate the power, since the power was a general one. This was regarded as an innovation in the law of power and was very much questioned in a later case in the same court, although it was unnecessary to overrule it. *Palmer* v. *Locke,* 15 Ch. D. 294. Although the question of motive is concerned indirectly in these two cases, it is motive in connection with something else, and the court in the Rhode Island case intimated that the decision would have been different had the donee obtained any personal benefits from the advancements.